

CERTIFICATION OF PC LANDING CORP. (DEBTOR-IN-POSSESSION)

On behalf of PC Landing Corp., debtor-in-possession, I hereby certify that the statements in the foregoing Letter are true, complete, and correct to the best of my knowledge, information and belief, and are made in good faith. I further certify that PC Landing Corp., debtor-in-possession, is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

By: 

Name: *M. K. Rutherford*

Title: *V. President*

Dated: August 19, 2004

August 19, 2004

VIA HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554

Re: *PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of FY
2004 Regulatory Fees*

Dear Mr. Fishel:

In accordance with Section 1.1166 of the Commission's Rules,¹ PC Landing Corp., debtor-in-possession ("PC Landing Corp."), by its undersigned counsel, respectfully requests waiver of its Fiscal Year 2004 regulatory fee payment, which if not waived would total \$423,889. Pursuant to Section 1.1166 of the Commission's Rules,² PC Landing Corp. also requests deferral of its FY 2004 regulatory fee payment while the waiver request is pending.

Under the Commission's rules, regulatory fees may be waived upon a showing of financial hardship.³ The Commission stated in its Report and Order on the Assessment and Collection of Annual Regulatory Fees for Fiscal Year 2003, "that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver."⁴ As demonstrated below, PC Landing Corp. meets this criterion, and its regulatory fees should therefore be waived for Fiscal Year 2004.

PC Landing Corp., a wholly-owned subsidiary of Pacific Crossing Ltd., debtor-in-possession ("PCL"), is the cable landing licensee for the Pacific Crossing ("PC-1") submarine cable system. On July 19, 2002, PC Landing Corp., together with certain other affiliates of PCL (collectively the "PCL Debtors"), commenced voluntary Chapter 11 cases in the U.S. Bankruptcy

¹ 47 CFR § 1.1166.

² *Id.*

³ See Assessment and Collection of Annual Regulatory Fees for Fiscal Year 2004, Report and Order, MD Docket No. 04-73 (FCC 04-146, rel. June 24, 2004) at ¶ 139.

⁴ See Assessment and Collection of Annual Regulatory Fees for Fiscal Year 2003, Report and Order, MD Docket No. 03-83 (FCC 03-184, rel. July 25, 2003) at ¶ 13.

Court in Delaware. *In re PC Landing Corp., et al.*, Chap. 11 Case No. 02-12086 (PJW) (Bankr. D. Del.). The PCL Debtors continue to operate today under Chapter 11 protection.

On January 13, 2004, the Commission granted PC Landing Corp.'s request for a deferral and waiver of its FY 2003 regulatory fees, together with all applicable late charges.⁵ The Office of Managing Director granted PC Landing Corp.'s waiver request based on its bankrupt status, noting that the Commission had previously found that "evidence of bankruptcy or receivership is sufficient to establish financial hardship".⁶

PC Landing Corp.'s financial status, as a Chapter 11 debtor-in-possession, remains unchanged since the FY 2003 waiver request and its financial condition continues to be dire. Indeed, when it filed its waiver request last year for a waiver of FY 2003 regulatory fees, it was in the process of concluding a sale process that would have resulted in the sale of the PC-1 system to a third party buyer under the terms of an Amended and Restated Asset Purchase Agreement (the "APA").⁷ In November 2003, however, a dispute arose between the PCL Debtors and the buyer, resulting in litigation being filed in the Bankruptcy Court. The parties have now reached a settlement agreement (the "Settlement Agreement"), approved by the Bankruptcy Court on August 17, 2004, which provides, among other things for the parties' agreement and acknowledgement that the APA has been terminated.⁸ Consequently, unlike last year, the PCL Debtors do not currently have a buyer for the PC-1 system, which places the PCL Debtors in an even more uncertain financial position. Consequently, as was the case last year, the fee waiver and deferral request is made for good cause shown and should be granted.

⁵ See Letter from Mark A. Reger, Chief Financial Officer, Federal Communications Commission, to Martin L. Stern and Holly R. Smith regarding PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of FY 2003 Regulatory Fees, Fee Control No: 00000RROG-04-018 (Jan. 13, 2004).

⁶ *Id.* (citations omitted).

⁷ At that time, PC Landing Corp. and Pivotal Telecom, LLC, ("Pivotal Telecom") the proposed buyer of the PC-1 system, had filed a joint application with the Commission for the transfer of the PC-1 cable-landing license from PC Landing Corp. to Pivotal Telecom. See *Application of PC Landing Corp. (Debtor-in-Possession) for Approval of the Assignment of its Submarine Cable Landing License to Pivotal Telecom, LLC* (File No. SCL-ASG-20030819-00024, filed August 12, 2003)(the "PCL/Pivotal Transfer Application"). That application remains pending.

⁸ See generally *In re PC Landing Corp.*, Case No. 02-12086 (PJW), *Debtors Motion Pursuant 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019 for Court Approval of Settlement Agreement and Mutual Release Between Certain of the Debtors and Pivotal Telecom, LLC* (Bankr. D. Del filed Aug. 3, 2004). Upon the Settlement Agreement becoming effective, the parties will withdraw the PCL/Pivotal Transfer Application.

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Should you have any questions concerning this request, or require additional information, please do not hesitate to contact the undersigned.

Respectfully Submitted,

**PC LANDING CORP.
(DEBTOR-IN-POSSESSION)**

By: 

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George Li, Deputy Chief Operations, Policy Division
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